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10 Attorneys for Plaintiff

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 EXTREME REACH, INC.

15 Plaintiff,

16 v.

17 SPOTGENIE PARTNERS, LLC,
18 ROBERT PORTER, GREGORY
STIRLING, and DOUGLAS
WILLIAMSON,

19 Defendants.
20

Case No. 2:13-cv-07563 DMG-JCGx

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1 WHEREAS Plaintiff Extreme Reach, Inc. (“Plaintiff”) and Defendants
2 SpotGenie Partners, LLC, Robert Porter, Gregory Stirling, and Douglas Williamson
3 (collectively “Defendants”) are conducting discovery in connection with the above-
4 captioned action;

5 WHEREAS the parties desire, by entering into this Stipulation and
6 Protective Order, to protect the unauthorized disclosure of confidential information
7 that would be detrimental to the legitimate commercial or privacy interests of the
8 parties, and that may need to be disclosed to adverse parties in connection with
9 discovery;

10 IT IS THEREFORE STIPULATED AND AGREED THAT:

11 1. Any Party (herein used to refer individually to Plaintiff, Defendants,
12 and any other party who later appears in this action as a plaintiff or defendant and
13 becomes bound by the terms of this Stipulation and Protective Order) or non-party
14 may designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” any
15 portions of any testimony, documents, records or tangible things – and any copies,
16 abstracts, excerpts or analyses thereof – given, used, served or produced by the
17 Party or non-party in connection with this action, including without limitation in
18 response to formal discovery demands or subpoenas or in compliance with the
19 initial disclosure requirements prescribed by Federal Rules of Civil Procedure 16
20 and 26(a), that the designating Party or non-party in good faith believes to contain,
21 reflect, regard, or disclose any trade secret, confidential, private, personal or
22 proprietary information. The Parties agree that the HIGHLY CONFIDENTIAL
23 designation should be used only to protect the disclosing party from the type of
24 irreparable competitive or commercial injury which could result from disclosing
25 previously non-public, proprietary or confidential information to a direct
26 competitor, or an individual affiliated with a direct competitor.

27 2. A Party or non-party that inadvertently fails to mark an item as
28 CONFIDENTIAL or HIGHLY CONFIDENTIAL at the time it is given, used,

1 served or produced may correct its failure in writing, accompanied by substitute
2 copies of each item, container or folder, appropriately marked as CONFIDENTIAL
3 or HIGHLY CONFIDENTIAL, provided such writing and substitute copies are
4 served no later than the discovery cutoff. Once substitute copies have been
5 provided, all copies of the inadvertently unmarked item, container or folder shall be
6 destroyed or returned to the producing Party or non-party.

7 3. No CONFIDENTIAL or HIGHLY CONFIDENTIAL information
8 shall be made public by the receiving Party or divulged to anyone other than as set
9 forth herein. Absent a specific order by the Court or if the designating Party
10 otherwise agrees, once designated as CONFIDENTIAL or HIGHLY
11 CONFIDENTIAL, such materials and information shall be used by the Parties
12 solely in connection with this litigation, and not for any other purpose whatsoever,
13 or in any other action, arbitration, hearing, dispute, tribunal or proceeding, for any
14 reason whatsoever.

15 4. CONFIDENTIAL or HIGHLY CONFIDENTIAL shall be treated by
16 each receiving Party as confidential unless and until the Court rules to the contrary
17 or the designating Party agrees otherwise. Unless and until the Court rules or the
18 designating Party otherwise agrees, and except as set forth in Paragraph 5 herein,
19 materials designated as CONFIDENTIAL shall be limited to the following persons,
20 subject to the qualification provisions contained in 4.f herein:

- 21 a. the Court and those employed by the Court;
- 22 b. each of the named Parties to the litigation who has, through that
23 Party's respective counsel, signed this Stipulation and Protective
24 Order (or who has accepted the terms of this Stipulation and
25 Protective Order by the execution of Exhibit A hereto), including
26 any representative of the Party (officers, directors, partners,
27 employees) assisting in the prosecution or the defense of the
28 litigation, and such Party's counsel, including the clerical,

- 1 secretarial, and paralegal staff employed by such counsel;
- 2 c. court reporters and employees of court reporters engaged by
- 3 counsel to record and transcribe testimony in this litigation, and
- 4 translators engaged for any purpose in the litigation;
- 5 d. experts and consultants assisting in the prosecution or the defense
- 6 of the litigation, plus their clerical and secretarial staff;
- 7 e. authors or recipients of CONFIDENTIAL information; and
- 8 f. persons from whom testimony is taken or is to be taken in the
- 9 litigation, either in a deposition or at trial, and their counsel,
- 10 provided that CONFIDENTIAL information may be disclosed to
- 11 such persons only in the course of his or her testimony or
- 12 preparation for such testimony, and that such person shall not
- 13 retain such CONFIDENTIAL information after his or her
- 14 testimony is concluded unless he or she executes a Confidentiality
- 15 Acknowledgement in the form attached as Exhibit A hereto.

16 Materials designated as HIGHLY CONFIDENTIAL shall be limited to attorneys

17 actively working on this case (including outside counsel for any of the Parties and

18 any in-house counsel for any of the Parties so long as they do not share the content

19 of any HIGHLY CONFIDENTIAL material with any of the Parties), as well as

20 those identified in the foregoing sub-paragraphs 4.a., c., d., e. and f.

21 5. Should any non-party serve a subpoena calling for the production of

22 any CONFIDENTIAL or HIGHLY CONFIDENTIAL information on any Party or

23 counsel for a Party who has received such information, the subpoenaed party in

24 such instance shall, within five (5) business days, provide notice to the Party that

25 designated the information as CONFIDENTIAL or HIGHLY CONFIDENTIAL via

26 e-mail or facsimile. It shall be the obligation of the designating Party, prior to the

27 response date on the subpoena, to seek a protective order or any other appropriate

28 relief from the Court if the designating Party wishes to maintain the confidentiality

1 of the material. A designating Party that fails to seek judicial relief to preclude the
2 disclosure of any CONFIDENTIAL or HIGHLY CONFIDENTIAL information in
3 response to a subpoena shall be deemed to have waived any claim of confidentiality
4 with respect to such material.

5 6. In the case of depositions, if counsel for a Party believes that a portion
6 or all of the deposition constitutes CONFIDENTIAL or HIGHLY
7 CONFIDENTIAL information, counsel may so state on the record and may request
8 that the specific pages which include such CONFIDENTIAL or HIGHLY
9 CONFIDENTIAL information be included in a separate sealed portion of the
10 transcript. The reporter shall be instructed to include on the cover page of each
11 sealed portion the legend: "This transcript portion contains information subject to a
12 Protective Order and shall be used only in accordance therewith."

13 7. When testimony designated as CONFIDENTIAL or HIGHLY
14 CONFIDENTIAL is (or is sought to be) elicited during a deposition, persons not
15 entitled to receive such information under the terms of this Stipulation and
16 Protective Order shall be excluded from the deposition. Counsel attending a
17 deposition who inadvertently fails to designate any portion of the transcript as
18 CONFIDENTIAL or HIGHLY CONFIDENTIAL on the record at the deposition
19 may do so within ten (10) court days following mailing of the transcript by the
20 Court reporter to that counsel. Such correction and notice thereof shall be made in
21 writing to the reporter, with copies to all other counsel, designating the portion(s) of
22 the transcript that constitute CONFIDENTIAL or HIGHLY CONFIDENTIAL
23 information and directing the reporter to place that portion under seal as provided in
24 Paragraph 6 herein.

25 8. In the event a Party wishes to file any CONFIDENTIAL or HIGHLY
26 CONFIDENTIAL information with the Court for any purpose, to the extent
27 practicable, that Party will inform the Party that designated the materials as
28 CONFIDENTIAL or HIGHLY CONFIDENTIAL so that the designating Party can

1 consider whether to withdraw its confidentiality designation. If the designating
2 party does not withdraw the confidentiality designation, the Party wishing to file
3 the CONFIDENTIAL or HIGHLY CONFIDENTIAL information with the Court
4 must submit such designated materials under seal in conformance with Central
5 District Local Rule 79-5 and any other relevant rules and procedures of this Court.
6 The Parties agree that such use of designated materials does not compromise the
7 designated status of such information, and the Parties agree that any designating
8 Party may seek to have such information maintained by the Court as
9 CONFIDENTIAL or HIGHLY CONFIDENTIAL.

10 9. The Parties recognize that a party intending to file documents or
11 materials designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL by
12 another party may not have information sufficient to support the application to file
13 under seal. Consistent with Central District Local Rule 79-5, the filing Party will
14 need to include such an application with its submission, but the designating Party
15 shall bear the burden of establishing to the Court's satisfaction the confidentiality of
16 any material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL,
17 including why the information must be sealed and the prejudice or harm the
18 designating Party will suffer if the material is not granted the protection of being
19 filed under seal. The designating party shall have three (3) full court days to
20 provide any material to the Court in support of the application to file under seal. If
21 a designating Party fails to provide such material within the allotted time, the Court
22 can act upon the application as submitted by the filing Party.

23 10. If a Party fails to file CONFIDENTIAL or HIGHLY
24 CONFIDENTIAL information under seal pursuant to Central District Local Rule
25 79-5, any person who in good faith believes that filing under seal is required to
26 protect its interests may move the Court to seal the CONFIDENTIAL or HIGHLY
27 CONFIDENTIAL information within ten (10) court days of learning of the
28 allegedly defective filing. Notice of such motion shall be given to all Parties. The

1 Clerk shall seal the disputed part of the filing until the Court rules on the motion.

2 11. The acceptance by a Party of CONFIDENTIAL or HIGHLY
3 CONFIDENTIAL information shall not constitute an admission or concession or
4 permit an inference that the CONFIDENTIAL or HIGHLY CONFIDENTIAL
5 information is, in fact, confidential or highly confidential. Should any Party object
6 in good faith to such designation, that Party may notify the designating Party or
7 Parties in writing of such objection, specifying the basis thereof. The Parties shall
8 then negotiate in good faith to attempt to resolve their dispute regarding the
9 confidentiality of the subject materials. Should such meet-and-confer effort fail, the
10 designating Party may then make a motion to this Court for a protective order
11 covering the designated information. The designating Party shall bear the burden of
12 establishing the confidentiality of any material designated as CONFIDENTIAL or
13 HIGHLY CONFIDENTIAL. The information which is the subject of such dispute
14 shall continue to be treated as confidential subject to this Stipulation and Protective
15 Order for a period of ten (10) court days following written notice of objection
16 unless a motion for a protective order is filed within that time, in which case the
17 information shall be treated as confidential pending the outcome of such motion. In
18 the absence of such a motion, the documents or information shall not be treated as
19 confidential upon the expiration of ten (10) court days after written notice of
20 objection.

21 12. Nothing in this Stipulation and Protective Order shall be construed as a
22 waiver of the right of any Party to object to the taking or the admissibility of any
23 testimony or other evidence where such an objection is based on a ground or
24 grounds other than that the testimony or evidence involves CONFIDENTIAL or
25 HIGHLY CONFIDENTIAL information.

26 13. If during document production, the producing Party inadvertently
27 produces a document entitled to protection under the attorney-client privilege, the
28 attorney work product doctrine, or other provisions of applicable law: (a) the

1 Parties agree that the erroneous or inadvertent production shall not constitute a
2 waiver of such protection as to either the subject matter of the material or as to
3 related documents or communications; and (b) the producing Party may request the
4 return of the inadvertently produced document at any time before the
5 commencement of trial, but no more than ten (10) court days after the document is
6 first marked as a deposition exhibit, identified as a potential trial exhibit, or
7 otherwise identified by any Party in any pleading or correspondence served on all
8 Parties to this action. Any such request shall be made in writing, and shall identify
9 the basis for the claimed protection. If the Party (or Parties) that received the
10 inadvertently produced document agrees that the document is entitled to protection
11 (without regard to its inadvertent production), all copies of the inadvertently
12 produced document shall be returned to the producing Party or destroyed, and no
13 reference to such document shall be made in discovery, at trial, or any other
14 manner. If the Parties do not agree that the document is entitled to protection, the
15 burden is on the producing Party to file an appropriate motion with the Court within
16 twenty (20) court days after the document is first marked as a deposition exhibit,
17 identified as a potential trial exhibit, or otherwise identified by any Party in any
18 pleading or correspondence served on all Parties to this action.

19 14. This Stipulation and Protective Order shall not prevent a Party from
20 applying to the Court for relief from this Stipulation and Protective Order or any of
21 its terms or provisions, or from applying to the Court for further or additional
22 protective orders.

23 15. Nothing in this Stipulation and Protective Order shall preclude any
24 person or entity from disclosing or using, in any manner or for any purpose, any
25 information or document if that information or document is lawfully obtained from
26 a third party under no obligations of confidentiality with respect thereto and having
27 the right to disclose such information. Nothing in this Stipulation and Protective
28 Order shall preclude any person or entity from disclosing or using, in any manner

1 or for any purpose, any information or document if that information or document is
2 publicly available.

3 16. In the event that additional persons become parties to this action, they
4 shall not have access to CONFIDENTIAL or HIGHLY CONFIDENTIAL
5 information produced by or obtained from any Party or nonparty until the newly
6 joined party or their counsel confirms in writing to all other Parties that they have
7 read this Stipulation and Protective Order and agree to be bound by its terms.

8 17. The restrictions on use of CONFIDENTIAL and HIGHLY
9 CONFIDENTIAL information set forth in this Stipulation and Protective Order
10 shall survive the conclusion of this litigation and, after conclusion of this litigation,
11 the Court shall exercise limited jurisdiction for the purpose of enforcing this
12 Stipulation and Protective Order.

13 18. Within thirty (30) days after the final termination of this action,
14 counsel for the receiving Party shall return all copies of the CONFIDENTIAL and
15 HIGHLY CONFIDENTIAL information to counsel for the designating Party, or
16 shall, at the option of the receiving Party, destroy such CONFIDENTIAL and
17 HIGHLY CONFIDENTIAL information, and certify in writing that said destruction
18 has occurred to counsel for the designating Party.
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1 19. The terms of this Stipulation and Protective Order shall be effective
2 and binding upon a party upon the signature of its counsel below.

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4
5 Dated: October __, 2013.

O'MELVENY & MYERS LLP
ERIC J. AMDURSKY
RYAN W. RUTLEDGE
KELLY S. WOOD

6
7
8 By _____
Eric J. Amdursky
Attorneys for Plaintiff
Extreme Reach, LLC

9
10 Dated: October __, 2013.

LEWIS BRISBOIS BISGARRD & SMITH
LLP
RYAN D. HARVEY
CHRISTOPHER HABASHY

11
12 By _____
Ryan D. Harvey
Attorneys for Defendants
Robert Porter, Gregory Stirling, Douglas
Williamson

13
14
15 Dated: October __, 2013.

LAW OFFICES OF GAGLIONE, DOLAN
& KAPLAN
JACK LAPEDIS

16
17
18 By _____
Jack LaPedis
Attorneys for Defendant
SpotGenie Partners, LLC

19
20
21
22 [PROPOSED] ORDER

23 Pursuant to the foregoing Stipulation and for good cause shown, IT IS SO
24 ORDERED.

25 Dated: November 12, 2013

26 
The Honorable Jay C. Gandhi
United States Magistrate Judge

EXHIBIT A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EXTREME REACH, INC.

Plaintiff,

v.

SPOTGENIE PARTNERS, LLC,
ROBERT PORTER, GREGORY
STIRLING, and DOUGLAS
WILLIAMSON,

Defendants.

Case No. 2:13-cv-07563 DMG-JCGx

**CONFIDENTIALITY
ACKNOWLEDGMENT**

I, _____, hereby acknowledge and declare that:

1. I have received a copy of the Stipulation and Protective Order in this action. I have carefully read and understand the provisions of the Stipulation and Protective Order.

2. I will comply with all of the provisions of the Stipulation and Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation and Protective Order, and will use only for purposes of this litigation (and not for any other purpose, including any business, competitive, or governmental purpose or function), any CONFIDENTIAL and HIGHLY CONFIDENTIAL information, including the substance and any copy, summary, abstract, excerpt, index or description of such material that is disclosed to me.

3. I will return all CONFIDENTIAL and HIGHLY CONFIDENTIAL information that comes into my possession, and all documents and things that I have prepared relating thereto, to counsel for the Party by whom I am employed or retained or from whom I received such material, when requested by such counsel to do so.

1 4. I understand that if I violate the provisions of the Stipulation and
2 Protective Order, I may be subject to sanctions by the Court and the Parties, or any
3 one of them, may assert other remedies against me. I hereby submit to the
4 jurisdiction of the United States District Court for the Central District of California
5 for the purpose of enforcement of the Stipulation and Protective Order in this
6 action.

7 5. My address is: _____.

8 6. My relationship to this case and the Parties thereto is: _____
9 _____
10 _____.

11
12 I declare under penalty of perjury under the laws of the United States
13 of America that the foregoing is true and correct.

14
15 Dated: _____

(Signature)

16
17
18 _____
19 Print Name and Title
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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2013, the foregoing document was electronically transmitted to the United States Court Clerk's Office using the CM/ECF System for filing and transmittal.

Eric J. Amdursky

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